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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 175
 Title: An Act relating to Non-Competitive Purchases
 Sponsor: Bennett
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: General Services & Supply
 BRU, Program or Subprogram(s) Affected: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Link *Robert J. Link* A Phone: 465-2250
 Division: General Services & Supply Date: April 23, 1984

Approved by Commissioner: Lisa Rudd *Lisa Rudd* Date: 4/30/84
 Agency: DEPARTMENT OF ADMINISTRATION

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Sec. 37.05.230. Competitive bids. In the manner provided in this chapter and regulations established under it

(1) a contract for construction and repairs, or a purchase of and contract for supplies, materials, equipment, and contractual services must be based on competitive bids; an award shall be made to the lowest responsible bidder after advertising for bids, except that (A) a bid shall be awarded to an Alaska bidder if the bid is not more than five per cent higher than the lowest nonresident bidder's; and (B) competitive bids need not be required (i) for contractual services where no competition exists; (ii) for sales involving fair trade items; (iii) when, in the judgment of the purchasing agent, food, clothing, or medical supplies, or materials for use in laboratory and experimental studies may be purchased otherwise to the best advantage of the state; (iv) where rates are fixed by law or ordinance; (v) for items traded in on like items; or (vi) for professional services;

(2) if the amount of the contractual services, purchase, or sale is estimated to exceed \$5,000, sealed bids shall be solicited, when practicable, by publication in a newspaper calculated to reach prospective bidders and by posting notices in public places within the area where the work is to be performed or material furnished and in addition the department may also designate a trade journal for publication; the department shall also solicit bids by sending notices by mail to all active prospective bidders known to it and all bids shall be sealed when received, and shall be opened in public at the hour stated in the notice; the department may limit the solicitation of bids or negotiate directly if it finds that it is in the best interests of the state;

(3) a contractual service, purchase or sale where the known requirements are estimated to be less than \$5,000 may be made either upon competitive bids in accordance with (2) of this section or in the open market, in the discretion of the department; but, so far as practicable, shall be based on at least three competitive bids and recorded as provided in AS 37.05.240; small purchases of less than \$500 in the discretion of the department may be made on the open market, and may be by cash payment from petty cash accounts set aside for that purpose; the department shall determine the amount of the petty cash accounts needed by each state agency, and inspect the petty cash accounts at least once each year to determine that the total plus amounts of receipts for unreplenished disbursements is equal to the fixed sum of cash set aside; shortages in petty cash accounts are a personal liability of the responsible head of the agency to whom the account is set aside; the department shall make all necessary regulations governing use and replenishment of petty cash funds;

(4) the provisions of this section relative to competitive bids do not apply to contracts for the operation of transportation systems for students to and from the schools within the state, as are authorized under AS 14.09.010; and these contracts may be awarded by bid or negotiation and, at the discretion of the Board of Education, may be awarded for periods of three years or less;

(5) an "Alaska bidder," for the purpose of bid awards under (1) (A) of this section, is a person who

(A) holds a current Alaska business license,

(B) submits a bid for goods or services under the name as appearing on the person's current Alaska business license,

(C) has maintained a place of business within the state for a period of six months immediately preceding the date of the bid;

(6) the competitive bid requirements of this section do not apply to air taxi services used by state employees when no formal contract is executed; the department affected shall pay the air taxi operator the tariff rates as published by the operator with the Air Transportation Commission for the type of aircraft required; the tariffs need not be uniform throughout the state and may reflect the diverse conditions of various areas of the state; the air taxi service used in each case shall be selected by the state employee who is to fly in the aircraft, or if more than one state employee is flying in the aircraft by the employee in charge; in all cases the air taxi operator shall have complied with AS 02.05 and other prequalifying regulations established by the department;

(7) the provisions of this section relative to an "Alaska bidder" do not apply to contracts estimated to exceed \$5,000 of the Department of Transportation and Public Facilities which are authorized under AS 35.15 or AS 19.10;

(8) the provisions of this section relative to competitive bids do not apply to the purchase of products or services manufactured or provided by a sheltered workshop;

(9) the provisions of this section relative to competitive bids do not apply to the purchase of products or services provided by the correctional industries program established under AS 33.32;

(10) requests for and acceptance of bids or other proposals for professional services shall comply with AS 24.23 or AS 36.58. (§ 3 art IV ch 82 SLA 1955; am §§ 8 — 10, 23 ch 186 SLA 1957; am § 1 ch 77 SLA 1959; am § 1 ch 158 SLA 1962; am § 1 ch 82 SLA 1964; am §§ 1, 2 ch 92 SLA 1967; am § 1 ch 61 SLA 1970; am § 1 ch 92 SLA 1975; am §§ 1, 2 ch 194 SLA 1975; am Executive Order No. 39, § 11 (1977); am § 5 ch 53 SLA 1982; am §§ 6 — 8 ch 144 SLA 1982)

Revisor's notes. — In 1983, (1)(B) and (1)(C) of this section were renumbered as (1)(A) and (1)(B) respectively and reference to the repeal of former (1)(A) was deleted.

Cross references. — For preference for Alaska forest products, see AS 36.15.010; for preference for Alaska producers or dealers in making state purchases or awarding contracts for supplies, see AS 36.20.010.

Effect of amendments. — The first

1982 amendment added paragraph (9).

The second 1982 amendment in paragraph (2), substituted "\$5,000" for "\$2,500" near the beginning and inserted "limit the solicitation of bids or" near the end. The amendment also substituted "\$5,000" for "\$2,500" and "\$500" for "\$300" in paragraph (3) and added paragraph (10).

Legislative history reports. — For report on 1962 amendment, see 1962 House Journal, pages 591, 592.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 14, 1984

SUBJECT: Sectional Analysis of SB 175

TO: Representative Mitch Abood
Chairman
House State Affairs Committee

FROM: Richard C. Folta
Legislative Counsel 

The bill amends AS 37.05.230 by adding a new paragraph that the governor, assistants to the governor, lieutenant governor, legislators, judges in all courts, the head or deputy head of departments or divisions, chairman or members of commissions or boards, state employees, and elected or appointed municipal officers may not sell a product or provide a service to the state under the noncompetitive provisions of AS 37.05.230, i.e.

- (1) contractual services where no competition exists
- (2) sales including fair trade items
- (3) certain professional services
- (4) rates fixed by law or ordinance
- (5) certain speciality items
- (6) certain school bus contracts
- (7) informal air taxi services
- (8) certain Department of Transportation and Public Facilities industries services or products

RCF:ojb
J7/060

Position Paper

SB 175

The Department of Administration is opposed to this bill as written.

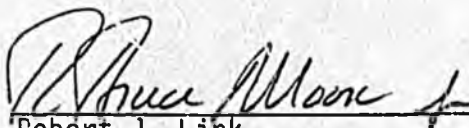
This bill would remove the exemption from competitive bidding for certain goods or services if the intended provider of those goods or services was a public official or a State employee. As written, it will probably result in the State avoiding doing business with affected firms.

The Department of Administration has no objections to the apparent intent of this bill. It is necessary to point out, however, that the bill may affect areas of AS 37.05.230 it was not intended to. These areas are subsection 3, concerning non-competitive purchases under \$500, subsection 4, concerning school bus service, subsection 8, concerning sheltered workshops, and subsection 9, concerning Corrections industries.

There may also be potential conflict of interest situations arising from implementation of this legislation in that award of a competitive bid to a public official or certain State employees may be contrary to the common law we operate under.

It appears that the remedy as to which part of the statute is to be affected lies in changing the bill to read, *Section 1. AS 37.05.230, subsection 6, is amended . . .

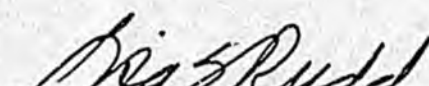
The potential conflict of interest situations may be remedied by proposed ethics legislation.

 ^A

Robert J. Link
Director
Division of General Services & Supply
Department of Administration

4-30-84

Date



Commissioner Lisa Rudd
Department of Administration

5/8/84

Date

Sec. 37.05.230. Competitive bids. In the manner provided in this chapter and regulations established under it

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(2) if the amount of the contractual service, purchase, or sale is estimated to exceed \$5,000, sealed bids shall be solicited, when practicable, by publication in a newspaper calculated to reach prospective bidders and by posting notices in public places within the area where the work is to be performed or material furnished and in addition the department may also designate a trade journal for publication; the department shall also solicit bids by sending notices by mail to all active prospective bidders known to it and all bids shall be sealed when received, and shall be opened in public at the hour stated in the notice; the department may limit the solicitation of bids or negotiate directly if it finds that it is in the best interests of the state;

(3) a contractual service, purchase or sale where the known requirements are estimated to be less than \$5,000 may be made either upon competitive bids in accordance with (2) of this section or in the open market, in the discretion of the department; but, so far as practicable, shall be based on at least three competitive bids and recorded as provided in AS 37.05.240; small purchases of less than \$500 in the discretion of the department may be made on the open market, and may be by cash payment from petty cash accounts set aside for that purpose; the department shall determine the amount of the petty cash accounts needed by each state agency, and inspect the petty cash accounts at least once each year to determine that the total plus amounts of receipts for unreplenished disbursements is equal to the fixed sum of cash set aside; shortages in petty cash accounts are a personal liability of the responsible head of the agency to whom the account is set aside; the department shall make all necessary regulations governing use and replenishment of petty cash funds;

(4) the provisions of this section relative to competitive bids do not apply to contracts for the operation of transportation systems for students to and from the schools within the state, as are authorized under AS 14.09.010; and these contracts may be awarded by bid or negotiation and, at the discretion of the Board of Education, may be awarded for periods of three years or less;

(5) an "Alaska bidder," for the purpose of bid awards under (1) (A) of this section, is a person who

(A) holds a current Alaska business license,

(B) submits a bid for goods or services under the name as appearing on the person's current Alaska business license,

(C) has maintained a place of business within the state for a period of six months immediately preceding the date of the bid;

(6) the competitive bid requirements of this section do not apply to air taxi services used by state employees when no formal contract is executed; the department affected shall pay the air taxi operator the tariff rates as published by the operator with the Air Transportation Commission for the type of aircraft required; the tariffs need not be uniform throughout the state and may reflect the diverse conditions of various areas of the state; the air taxi service used in each case shall be selected by the state employee who is to fly in the aircraft, or if more than one state employee is flying in the aircraft by the employee in charge; in all cases the air taxi operator shall have complied with AS 02.05 and other prequalifying regulations established by the department;

(7) the provisions of this section relative to an "Alaska bidder" do not apply to contracts estimated to exceed \$5,000 of the Department of Transportation and Public Facilities which are authorized under AS 35.15 or AS 19.10;

(8) the provisions of this section relative to competitive bids do not apply to the purchase of products or services manufactured or provided by a sheltered workshop;

(9) the provisions of this section relative to competitive bids do not apply to the purchase of products or services provided by the correctional industries program established under AS 33.32;

(10) requests for and acceptance of bids or other proposals for professional services shall comply with AS 24.23 or AS 36.98. (§ 3 art IV ch 82 SLA 1955; am §§ 8 — 10, 23 ch 186 S 19: 7; am § 1 ch 77 SLA 1959; am § 1 ch 158 SLA 1962; am § 1 ch 82 SLA 1964; am §§ 1, 2 ch 92 SLA 1967; am § 1 ch 71 SLA 1970; am § 1 ch 92 SLA 1975; am §§ 1, 2 ch 194 SLA 1975; am Executive Order No. 39, § 11 (1977); am § 5 ch 53 SLA 1982; am §§ 6 — 8 ch 144 SLA 1982)

Revisor's notes. — In 1983, (1)(B) and (1)(C) of this section were renumbered as (1)(A) and (1)(B) respectively and reference to the repeal of former (1)(A) was deleted.

Cross references. — For preference for Alaska forest products, see AS 36.15.010; for preference for Alaska producers or dealers in making state purchases or awarding contracts for supplies, see AS 36.20.010.

Effect of amendments. — The first

1982 amendment added paragraph (9).

The second 1982 amendment in paragraph (2), substituted "\$5,000" for "\$2,500" near the beginning and inserted "limit the solicitation of bids or" near the end. The amendment also substituted "\$5,000" for "\$2,500" and "\$500" for "\$300" in paragraph (3) and added paragraph (10).

Legislative history reports. — For report on 1962 amendment, see 1962 House Journal, pages 591, 592.

upon which a common law rule against legislator contracts could be constructed. Any voter could bring an action to void such contracts 13/ and we would likely support that result in the absence of a compelling contrary justification. 14/

It is therefore our conclusion that a contract between a state agency, 15/ on the one hand, and a legislator, a business owned or operated by a legislator, or a business in which the legislator is an officer, manager, or large stockholder, on the other hand, would be illegal under the common law. 16/

* * * * *

The second legislator conflict situation concerns legislators (and some state officers and employees) who apply to re-

13/ See AS 39.50.100.

14/ Were a legislator contractor the only possible source for particular goods or services, we might support an exception. Similarly, an exception might be justifiable if a legislator proposed to provide non-unique, "off-the-shelf" goods (e.g., office supplies, motor oil) where price would be virtually the only variable. Exceptions are not supportable where the transaction requires the exercise of judgment by an administrator or an extended period of performance by the legislator. See State v. Yoakum, quoted infra.

15/ A court might well go further and say that legislators may not, as private contractors, do business with any entities (state agencies, municipalities, nonprofit corporations) whose projects are financed with state funds.

16/ At this time, we offer no opinion on situations where the legislator is an employee of the contracting firm, or where a close relative of a legislator is an officer, manager, large stockholder or employee of the contracting firm.

AMENDED TITLE:
AN ACT RELATING TO THE NONCOMPETITIVE PURCHASE OF A PRODUCT
OR SERVICE FROM A PUBLIC OFFICIAL OR STATE
EMPLOYEE

PRIME SPONSOR: BENNETT.

CO-SPONSORS:

CURRENT STATUS: 4/23/84 IN (H) STATE AFFAIR

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/11/83	01	0373	FIRST READING -- COMMITTEE REPORTS
04/12/83	02	0668	JUD -- DP05
04/19/84	03	2771	RLS -- OTHER05 TAKEN UP IMMEDIATELY
04/19/84	04	2773	SECOND READING
04/19/84	05	2773	ADVANCED TO 3RD READING BY UNAN CONSENT
04/19/84	06	2773	THIRD READING
04/19/84	07	2773	PASSED BY DIV 16-00-04
04/19/84	08	2774	NOTICE OF RECONSIDERATION GIVEN
04/23/84	09	2796	RECONSIDERATION NOT TAKEN UP
****	**	**	*** *** ***

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/23/84	10	3420	FIRST READING -- COMMITTEE REPORTS STATE AFFAIRS RULES
****	**	**	*** *** ***

(3) compile statistics necessary for the budget and other statistics required by the governor. (§ 8 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957; am § 1 ch 11 SLA 1965)

Article 3. Uniform Purchasing.

Section	Section
220. Purchasing agent	260. Preference for Alaska products
230. Competitive bids	270. Purchases through General Services Administration
231. Estimation of flying hours required	280. Leases
240. Award of contracts and purchases	
250. Delegation of duties	

Sec. 37.05.220. Purchasing agent. The Department of Administration is the purchasing agent for the state. The department shall

(1) purchase, rent, or otherwise provide for the furnishing of supplies, materials, equipment, or contractual services for all state agencies;

(2) have power to authorize an agency to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions and procedures prescribed in AS 37.05.230;

(3) prescribe the manner in which supplies, materials, and equipment shall be purchased, delivered, stored, and distributed;

(4) prescribe the time, manner, authentication, and form of making requisitions for supplies, materials, equipment, and contractual services;

(5) fix standards of quality and quantity and develop standard specifications after consultation with the several state agencies, and approve or determine final specifications;

(6) have power to transfer to or between agencies or to sell or trade in supplies, materials, and equipment of agencies which are surplus, obsolete, or unused; and the department shall make proper adjustments in the accounts of the agencies concerned;

(7) prescribe the manner of inspecting deliveries of supplies, materials, and equipment and of making tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(8) prescribe standard forms for bids and contracts for construction, purchases of supplies, and other purposes, which bids and contracts may contain provisions which the department considers necessary; but all contracts for construction shall require the filing of an acceptable performance bond and a penalty provision for failure to perform the contract according to its terms;

(9) provide for other matters which may be necessary to carry out the provisions of this chapter and the regulations adopted under it. (§ 1 art IV ch 82 SLA 1955; am §§ 6, 7 ch 186 SLA 1957; am § 1 ch 55 SLA 1960)

Sec. 37.05.230. Competitive bids. In the manner provided in this chapter and regulations established under it

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Legislative history reports. — For report on 1982 amendment, see 1982 House Journal, pages 591, 592.

Opinions of Attorney General. — A policy of publishing regulations concerning bidding and letting of contracts in the Administrative Code is consistent with the Alaska Administrative Procedure Act, since these regulations are regulations in which an important portion of the public has a vital interest and since they are of great use to the portion of the public interested in dealing with contracting with the state. 1959 Op. Att'y Gen. No. 27.

The purpose of this chapter was not only to protect the state and the public purse from uneconomic contracts let because of failure to request competitive bids and because of possible favoritism, but was also to insure that contractors would be insured a certain amount of "fair play" in dealing with the state government and in

competing with one another for state contracts. 1959 Op. Att'y Gen., No. 27.

As to the preparation and filing of regulations to be submitted to the secretary of state pertaining to the prequalification of contractors as a prerequisite for bidding on construction projects, see 1959 Op. Att'y Gen., No. 27.

The state cannot grant an exclusive lease or franchise without the necessity of calling for bids. 1962 Op. Att'y Gen., No. 4.

If an exclusive lease or franchise is in effect the state cannot extend the term thereof without calling for bids. 1962 Op. Att'y Gen., No. 4.

The commissioner of public works has the authority to grant a nonexclusive lease or franchise without calling for competitive bids. 1962 Op. Att'y Gen., No. 4.

NOTES TO DECISIONS

Notice requirements. — This section makes no requirement for notice by special delivery, registered or certified mail. State ex rel. Department of Admin. v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

Amendments to bid invitations. — Using regular mail to send an amendment to an invitation for bids is a proper procedure for notifying known bidders. State ex rel. Department of Admin. v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

Judicial review of agency actions of rejecting a bid for failing to return an amendment should extend only to whether there was a reasonable basis for the agency to decide that the bid in question was nonresponsive. State ex rel. Depart-

ment of Admin. v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

The department had a reasonable basis to determine that a defect in a bid was material and that the bid was nonresponsive when the bidder failed to acknowledge receipt of amendments. State ex rel. Department of Admin. v. Bowers Office Prods., Inc., Sup. Ct. Op. No. 2244 (File No. 4792), 621 P.2d 11 (1980).

Joint ventures. — A joint venture qualifies as an Alaska bidder under this section even though only one of its venturers would individually qualify as an Alaska bidder. Irby-Northface v. Commonwealth Elec. Co., Sup. Ct. Op. No. 2664 (File Nos. 7632, 7649), P.2d (1983).

Collateral references. — Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums

exceeding specified amount to be let to lowest bidder, 53 ALR2d 496.

Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility, 81 ALR3d 979.

Sec. 37.05.231. Estimation of flying hours required. The state, when soliciting bids for air charter service, shall make available in writing to prospective bidders upon request an estimate of the flying hours required by each individual agency of the state which will take advantage of these services. (§ 1 ch 17 SLA 1967)